IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 670 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

M/S. HARKHCHAND DAHYABHAI

Appearance:

Mr. K.P. Raval, APP for appellant.

MR RC KAKKAD for Respondents.

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 16/11/2000

ORAL JUDGEMENT

Appellant, State of Gujarat, through Food Inspector, Mr. B.J. Patel has filed this appeal against the order of acquittal dated May 3, 1990, passed by the learned Judicial Magistrate (F.C.), Junagadh in Criminal Case No.. 2123 of 1985 by which order the respondents came to be acquitted of the offences punishable under Section 7 and 16 of the Prevention of Food Adulteration Act, 1954 (to be referred to as "the Act").

2. Complainant, who was notified and authorised as the Food Inspector for the District of Junagadh inspected the shop of the respondents situated at village Menderda, District-Junagadh on February 21, 1985. The respondents were dealing in sale of grains. grocery, seeds and pure ghee. Complainant, B.J. Patel collected samples of pure ghee in three bottles which were duly cleaned and airtight. The panchnama was prepared with regard to the collection of ghee in three bottles. After following the usual procedure under the Act one sample of ghee was sent to the laboratory for analysis. The report of the laboratory indicated that ghee did not conform to the standard prescribed under the Act and the Rules. The complainant after obtaining sanction from the competent authority lodged complaint for the offences punishable under Section 7 & 16 of the Act against the respondents in the Court of learned Judicial Magistrate (F.C.), Junagadh which came to be numbered as Criminal Case No. 2123 of 1985.

3. To prove the charges against the respondents, Food Inspector, Babulal Joitaram Patel was examined at Exhibit 16. One Popatlal Jagabhai, who was the panch of the panchnama drawn at the time of collection of sample of ghee, was examined at Exhibit 41. Prosecution produced documentary evidence in the nature of complaint, report of the laboratory, sanction etc., to prove the case against the respondents. The learned Judge after appreciating oral as well as documentary evidence came to the conclusion that there was a breach of mandatory provision of Rule 14 of the Prevention of Food Adulteration Rules, 1955. It was also observed by the learned Magistrate that no evidence was led by the complainant that before taking the sample of ghee he had boiled, stirred and churned ghee to make it homogeneous. Learned Magistrate also observed that there was breach of Section 20 as sanction obtained before filing prosecution was not legal and valid. On the basis of above referred two conclusions the learned Magistrate acquitted the respondents which has given rise to filing of this appeal by the appellant.

4. Learned APP Mr. K.P. Raval has taken me through the entire record and proceedings of the case. The evidence of complainant does not mention that he had followed the mandatory provision as prescribed under Rule 14 of the Rules. Rule 14 of the Prevention of Food Adulteration Rules provides that samples of food for the purposes of analysis shall be taken in clean, dry bottles or jars or any other suitable containers. The complainant in his cross-examination admitted that he had

not taken cleaned bottles in which sample of ghee was taken. The evidence of complainant does not establish that he had taken samples in clean dry bottles. Therefore, the finding of the learned Magistrate that there was breach of Rule 14 of the Rules is quite eminently just and proper and deserves to be confirmed.

5. The evidence of complainant does not prove that before taking sample he had boiled the quantity of the ghee which was stored in a vessel. The evidence of complainant also does not prove that he had properly stirred the ghee to make it homogenous. This High Court, in Criminal Revision Application No. 2420 of 1985 decided on 27th April 1995 reported in 1996 (2) Prevention of Food Adulteration Cases, Page 77, has laid down the principle that if the entire quantity of ghee is not heated or boiled and the said quantity is not stirred so as to make the sample homogenous and if the sample is taken without following the above procedure, the conviction of the vendor cannot be sustained. In my view, the evidence led by the complainant did not establish that he had boiled the quantity of ghee and after it was melted and after churning the same the samples in three bottles were taken. On this ground also, the order of acquittal recorded by the learned Magistrate deserves to be confirmed.

6. As a result of the foregoing discussion, this appeal, being meritless, deserves to be dismissed and is dismissed.

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